U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31035202

Date: JUN. 21, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a provider of protective security services, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not satisfied the initial evidentiary criteria, of which he must meet at least three. In addition, the Director determined that the Petitioner had not established that his entry into the United States will substantially benefit prospectively the United States. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the [noncitizen] has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the [noncitizen's] entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner stated he provides "protective security services to high-profile, ultra-high net worth individuals." He intends to continue to work in the executive protection field in the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Petitioner met the plain language requirements of one evidentiary criterion relating to high remuneration for services at 8 C.F.R. § 204.5(h)(3)(ix). On appeal, the Petitioner maintains that he also meets the evidentiary criteria at 8 C.F.R. § 204.5(h)(3) related to memberships (ii), and evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation (viii).

We will not disturb the Director's determinations regarding the Petitioner's high remuneration for services. But for the reasons discussed below, we agree with the Director that the Petitioner has not satisfied the other claimed criteria.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii)

The Petitioner contends eligibility for this criterion based on his membership of the Ronin South Africa's (Ronin) alumni association due to his successful completion of the Hostile Environment Close Protection Course in 2018. U.S. Citizenship and Immigration Services (USCIS) determines if the association for which the person claims membership requires that members have outstanding

achievements in the field as judged by recognized experts in that field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual. The Director determined that the Petitioner did not submit documentary evidence demonstrating that outstanding achievements are required for membership in this organization, or that it relies on recognized national or international experts to determine which individuals qualify for membership.

This criterion contains several evidentiary elements the Petitioner must satisfy. First, the Petitioner must demonstrate that he is a member of an association in his field. Second, the Petitioner must demonstrate both of the following: (1) the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and (2) the associations use this outstanding determination as a condition of eligibility for prospective membership.

On appeal, the Petitioner contends that the issue is not whether entry into Ronin's hostile environment close protection course requires a person with outstanding achievements in the field and judged by recognized national or international experts, but instead, whether the individuals who complete the course and are members of the Ronin's alumni association, satisfy the evidentiary requirements. The Petitioner submitted print-outs from the Ronin website that listed the requirements for entry into a course program to include the applicant must have English language proficiency at the equivalent of a CEFR B2 level; a holder of a driver's license for at least two years; a good physical fitness baseline that is tested on arrival with a standard fitness test; and, a clear or approved criminal background check. It appears that entry for a Ronin course is open to any person who can meet the listed requirements of language, a driver's license, and pass a fitness test and a criminal background. While we appreciate that the fitness test is rigorous, the Petitioner did not provide sufficient evidence to establish that outstanding achievements, as judged by recognized national or international experts, are requirements for entry into a course at Ronin.

Regarding the Petitioner's claim that we should evaluate the requirements for entry into Ronin's alumni association, the Petitioner submitted a reference letter from the CEO of Ronin Protective Services CC on his behalf that stated the "candidate's graduation from our academy indicates that they are above average and an exception to the mediocrity within the industry." The author further stated students are assessed on "numerous fronts including the theoretical and practical aspects of the vocation and they excelled." In a second letter from the same author, he further explained that 15 percent of students fail the required fitness assessment for entry into the close protection training program. He further noted that in 2018, the year the Petitioner completed the close protection training program at Ronin, the failure rate of the close protection course was 40.6%. While the letters from the CEO of Ronin state that membership to the alumni group requires certain achievements, such as a certain level of physical fitness and the successful completion of a five-week program, the letters do not provide sufficient information regarding its membership criteria, nor do they demonstrate that such requirements are comparable to the regulatory requirement of outstanding achievements. The Petitioner also failed to provide evidence that admittance to the alumni association is determined by nationally or internationally recognized experts in the field pursuant to the plain language of the regulation

at 8 C.F.R. § 204.5(h)(3)(ii). It is insufficient to allege eligibility through conclusory assertions that are not supported by sufficient evidence, which proves the allegation.[1]

The record does not contain sufficient documentary evidence to demonstrate the membership eligibility requirements for the claimed association, how members are selected, and that the Petitioner's membership in this alumni association was based on being judged by recognized national or international experts as having outstanding achievements in the field of protective services. Therefore, this criterion has not been met.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

To meet the plain language requirements of this criterion, a petitioner must establish that they have performed in either a leading or critical role, and that the role was for an organization or establishment (or a division or department of an organization or establishment) with a distinguished reputation. In response to the Director's request for evidence, the Petitioner stated he performed a critical role at [redacted]

For a critical role, individuals must establish that they have contributed in a way that is of significant importance to the outcome of the organization or establishment's activities or those of a division or department of the organization or establishment.[2] In addition, this criterion requires that the organization or establishment be recognized as having a distinguished reputation. USCIS policy reflects that organizations or establishments that enjoy a distinguished reputation are "marked by eminence, distinction, or excellence." *See generally id.* (citing to the definition of *distinguished*, *Merriam-Webster*, https://www.merriam-webster.com/dictionary/distinguished). The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

As noted by the Director, while the Petitioner submitted letters to confirm his role at [redacted] and [redacted] they provided very general explanations of the Petitioner's duties in his role at Team Leader. The Petitioner did not provide sufficient documentation to establish he played a critical role as the letters primarily contain bare assertions of acclaim and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions rose to a level consistent with major significance in the field.

On appeal, the Petitioner does not provide additional evidence to overcome the Director's decision and instead contends throughout his career he performed in critical roles in his field of expertise by holding his current position of Executive Protection Consultant/Team Lead for [redacted] and his prior position with the same title at [redacted] On appeal, the Petitioner reiterates that he provides executive protective service to high-profile individuals, and is currently providing these services to [redacted] the CEO of [redacted] He further contends that due to the nature of his work in which he provides protective

[1] *Matter of Ho,* 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998); *Fano v. O'Neill*, 806 F.2d 1262, 1266 (5th Cir. 1987); *1756, Inc. v. Att'y Gen*, 745 F. Supp. 9, 17 (D.D.C. 1990).
[2] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2).

services to a famous individual, there is a "limit on the kind of information that is permitted to be disclosed."

The Petitioner contends he performed a critical role for [redacted] by "providing personal protective services to one of the company's extremely wealthy and high profile clients", [redacted] the CEO of [redacted] The Petitioner submitted a letter from the Vice President, Enterprise Programs at [redacted] that indicated the Petitioner is a Team Leader and provided a brief outline of the duties performed in that position. The author also noted that the Petitioner's training and unique skill set make him an "invaluable asset to [redacted] mission to provide comprehensive security solutions that help protect businesses, employees, communities, and assets." The Petitioner also submitted a letter from the Director, US Immigration of [redacted] stating that the Petitioner is an employee of [redacted] but will support [redacted] in the position of GSPS Team Lead.

The letter from [redacted] however, does not provide specific, detailed information explaining how the Petitioner's contributions to the company resulted in successful outcomes for the business. Instead, the letter describes the Petitioner's role and skills, it does not show how his role as a Team Leader impacted [redacted] While the letter makes the broad claim that the Petitioner is an "invaluable asset" to [redacted] it did not further elaborate and articulate how the Petitioner's role was critical to the company. Letters from employers, attesting to an employee's role in the organization, must contain detailed and probative information that specifically addresses how the person's role for the organization or establishment was leading or critical. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2 appendix. The Petitioner's do not.

In summary, the evidence provided does not sufficiently demonstrate the Petitioner performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The letters considered above primarily contain bare assertions of acclaim and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions rose to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *See Fedin Bros. Co., Ltd. V. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. At 17.

For these reasons, the Petitioner has not established that he meets this criterion.

B. Summary and Reserved Issues

The record does not establish that the Petitioner meets the three evidentiary criteria discussed above. As such, the Petitioner has not met the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the one remaining criteria at 8 C.F.R. § 204.5(h)(3)(i) cannot change the outcome of the appeal.

Moreover, since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding how his entry into the United States will substantially benefit prospectively the United States. Therefore, we reserve and will not address this remaining issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal

agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of D-L-S,* 28 I&N Dec. 568, 576-77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

C. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved O-1 nonimmigrant visa petitions filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition adjudicated on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d at 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).[3]

III. CONCLUSION

Because the Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3), we need not provide the type of final merits determination described in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, determining that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. Matter of Price, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has submitted documentation of his achievements but has not demonstrated that these achievements have translated into a level of recognition that constitutes sustained national or international acclaim or demonstrates a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Furthermore, the record does not otherwise demonstrate that the Petitioner is one of the small percentage of individuals who have risen to the very top of the field of endeavor. Section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[3] *See also* 6 USCIS Policy Manual, supra, at F.2(B)(3).